



Occasional Paper 9

Proliferation Security Initiative: Origins and Evolution

Susan J. Koch

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Failure as a Policy Catalyst

On December 9, 2002, the United States and Spanish navies cooperated to interdict a North Korean vessel, the *So San*, in the Arabian Sea.¹ The operation initially appeared to be an unqualified success, a textbook example of interdiction to prevent proliferation of weapons of mass destruction (WMD), related materials, or delivery systems. According to press reports, the United States began tracking the vessel when it first left North Korea, believing that it was carrying a cargo related to Scud ballistic missiles. The *So San* flew no flag, making it a stateless vessel under international law, subject to interception and boarding by warships on the high seas.² The United States asked the Spanish navy to stop and search the *So San* when the ship reached the patrol area of Combined Task Force (CTF) 150, then under Spanish command. The mission of CTF 150 was “to promote maritime security in order to counter terrorist acts and related illegal activities” in the Gulf of Aden, Gulf of Oman, Red Sea, and Indian Ocean.³ Thus, the United States proposed—and Spain agreed—to use a tool developed to combat global terrorism in a counterproliferation mission.

After the Spanish naval ship *Navarra* intercepted the *So San*, the vessel’s captain refused to halt, and Spanish naval personnel forcibly boarded it by helicopter. U.S. naval personnel joined the Spanish on board quickly thereafter. The *So San*’s manifest claimed that it was carrying a cargo of cement. That statement, while true, was incomplete. Hidden in the ship’s hold under many bags of cement was a proliferation cargo comprised of 15 complete Scud missiles, 15 conventional warheads, 23 containers of nitric acid missile fuel, and 85 barrels of initially unidentified chemicals, later described as oxidizer for the missile fuel. At Spain’s request, the U.S. Navy took control of the vessel and its cargo.

Almost immediately, the *So San* interdiction turned from success to embarrassing failure. On December 11, the United States released the vessel just 2 days after its seizure, and the ship resumed passage to its destination—this time without interruption. The government of Yemen had agreed in late summer 2002 not to purchase any more Scud missiles from North Korea, and the Yemeni embassy in Washington initially denied that the *So San* shipment was destined for its country.

However, after news of the interdiction leaked to the media, senior Yemeni officials reacted differently and vehemently. On December 10, the Yemeni president complained directly to Vice President Richard B. Cheney, and the foreign minister to Secretary of State Colin Powell, claiming that the missiles, warheads, and fuel were Yemen's property and demanding that the *So San* be allowed to proceed. The United States acceded. Former senior U.S. Government officials directly involved in the *So San* events believe that the government of Yemen would have quietly accepted the interdiction had it remained secret but that the publicity about both the shipment and its destination made it politically untenable for the Yemenis to acquiesce to the seizure of their property.⁴

In announcing the *So San* release, White House press secretary Ari Fleischer made a point of mentioning that "Yemen is a partner of the United States in the war on terrorism." Fleischer also argued that there was a lack of international legal authority for the United States to retain the *So San* and its cargo, and stressed that the George W. Bush administration would work to redress that problem:

There is no provision under international law prohibiting Yemen from accepting delivery of missiles from North Korea. While there is authority to stop and search, in this instance there is no clear authority to seize the shipment of Scud missiles from North Korea to Yemen. And therefore, the merchant vessel is being released.

...

There are many agreements around the world in international treaty law which have been agreed to, focused on nuclear proliferation, on biological proliferation, on chemical weapons proliferation. One thing that does come out of this that the United States thinks needs to be looked at by the world is that there are less stringent agreements on the international treaty level dealing with proliferation of missiles. . . . One thing that this does underscore is the need to take a look—and we will do so, with friends and others around the

*world—in a diplomatic sense about whether or not the international regimes that deal with missile proliferation need a second look.*⁵

Legal scholars disagree about whether the United States and/or Spain had authority to retain the *So San* and its cargo. Some take a restrictive view, arguing that in this case, only North Korea could have taken action against the ship. For example, Craig H. Allen states that “any enforcement action would ultimately have to be based on a violation of the enforcing state’s municipal laws. . . . [T]he only states that will likely have applicable laws under such circumstances are the vessel’s flag state and the state from which the illicit cargo was exported. Neither Spain nor the United States fell within those categories.”⁶ Neither did Yemen. Others argue that the issue was worth pursuing in U.S. courts, on the grounds that the Scuds may ultimately have come under the control of al Qaeda, and that the United States had the right to confiscate material destined for an adversary in the war on terror.⁷ Despite those different views, most legal scholars appear to agree with Fleischer’s statements: because Yemen was not a hostile power and credibly claimed ownership of the missiles, the United States had no legal basis to retain the *So San* and its cargo over Yemeni objections.

In any event, former senior U.S. Government officials involved in the *So San* events maintain that legal considerations had little impact on the release—that it was solely a political decision. They argue that the Bush administration placed great priority at the time on cultivating and retaining Middle Eastern state support against terrorism, and would forgive much to that end. Robert G. Joseph, former National Security Council Senior Director for Proliferation Strategy, speculates that Fleischer explained the release on legal grounds to underscore that the President would follow a new path to prevent such problems in the future.⁸ In any case, it appears that the administration was not interested in finding appropriate legal grounds to challenge the Yemeni government. If it had been, it almost certainly would not have released the vessel so quickly; any real examination of potential legal avenues would have taken longer than a day or two.⁹

From Failure to Proposal

On the day the *So San* was released, and after the public announcement, President Bush called into the Oval Office two key officials involved in the case: Deputy National Security Advisor Stephen Hadley and National Security Council (NSC) Senior Director for Proliferation Strategy, Counterproliferation, and Homeland Defense Robert Joseph. The President wanted answers to essentially two tough questions: why was he put in the position that he faced with the *So San*, and what could be done to prevent such failures in the future?¹⁰ That difficult meeting in the Oval Office set in motion the process that led to the creation of the Proliferation Security Initiative (PSI).

National Strategy to Combat Weapons of Mass Destruction

In a strange coincidence, on the same day as the *So San* release, the Bush administration published the *National Strategy to Combat Weapons of Mass Destruction*. Elements of this strategy had been included in the September 2002 *National Security Strategy of the United States*, but the December publication was unprecedented in its detail and focus on countering WMD and missile delivery systems.

The December 2002 publication also departed from earlier declaratory policy by addressing policies and actions to *counter* proliferation before addressing ones to *prevent* it. The professed aim was not to downgrade proliferation prevention efforts, but rather to emphasize that proliferation would occur and must not be allowed to succeed. Thus, the *National Strategy to Combat Weapons of Mass Destruction* states:

*We know from experience that we cannot always be successful in preventing and containing the proliferation of WMD to hostile states and terrorists. Therefore, U.S. military and appropriate civilian agencies must possess the full range of operational capabilities to counter the threat and use of WMD by states and terrorists against the United States, our military forces, and friends and allies.*¹¹

Not only did the *National Strategy to Combat Weapons of Mass Destruction* stress counterproliferation, it also highlighted interdiction as the first element

discussed: “Effective interdiction is a critical part of the U.S. strategy to combat WMD and their delivery means. We must enhance the capabilities of our military, intelligence, technical, and law enforcement communities to prevent the movement of WMD materials, technology, and expertise to hostile states and terrorist organizations.”¹²

The simultaneous publication of the *National Strategy to Combat Weapons of Mass Destruction* heightened the sense of failure surrounding the *So San* incident, both within and outside the Bush administration. The collapse of the *So San* operation occurred just as the administration publicly highlighted the importance to national security of interdicting proliferation shipments.

Still, the negative political fallout from the *So San* events was rather limited and short-lived. Two factors probably helped to contain it. First, domestic and international attention at the time was focused overwhelmingly on the likelihood of conflict in Iraq; under the circumstances, the *So San* quickly disappeared from the front pages.¹³ Second, and perhaps more important in the long run, elements of the *So San* operation were quite successful. The political and military cooperation between the United States and Spain worked well. In addition, the intelligence about the *So San* was accurate; the ship was in fact carrying a clandestine proliferation cargo that was intended to be hidden and disguised. In that respect, the *So San* case differed markedly from the only previous U.S. proliferation interdiction attempt that was widely publicized. In August 1993, the Clinton administration believed that a Chinese container ship, the *Yinhe*, was carrying chemical weapons precursors to Iran. The U.S. Navy forced the *Yinhe* to stop in the Indian Ocean for about 3 weeks while China and the United States argued over the shipment. Finally, China agreed to have a Saudi-U.S. team inspect the vessel in a Saudi Arabian port; the suspect chemicals were not on board.¹⁴

Analysis of Lessons Learned

The first action taken by President Bush’s advisors to address his questions about the *So San* was to undertake an interagency analysis of the legal, political, diplomatic, operational, and intelligence-related lessons to be learned from the incident. With international attention focused on Iraq, the administration was

able to conduct that analysis without public scrutiny. Indeed, none of the steps immediately after the release of the *So San* became publicly known before the President's PSI announcement 6 months later. One reason for the subsequent success of the PSI proposal almost certainly has been the lack of any premature disclosure that could have constrained policymakers' choices.

The task to analyze the *So San* lessons learned was given to an Interdiction Sub-Policy Coordinating Committee (Sub-PCC), chaired by Brendan Melley, Director for Proliferation Strategy on the NSC staff, who reported to Robert Joseph. Key agencies involved were the Department of State, the Office of the Secretary of Defense (OSD), Joint Staff, and Central Intelligence Agency. Over the course of the review, the Departments of Treasury, Justice, and Commerce and components of the nascent Department of Homeland Security (DHS) were also included. Further, a member of the NSC Legal Advisor's Office convened a group of interagency lawyers to identify existing authorities for interdiction; this group included representatives from the above agencies, as well as additional players such as the Federal Aviation Administration and additional DHS elements (the U.S. Coast Guard, Customs and Border Protection, and Immigration and Customs Enforcement). Rather than working entirely in parallel, the legal and policy groups closely interacted. For example, Brendan Melley participated in all meetings of the legal group and was often joined by key policy officials from the Departments of State and Defense.¹⁵

According to Melley, the interagency lessons learned analysis focused on identifying the circumstances under which the United States and like-minded nations could interdict WMD and missile proliferation shipments, whether by sea, air, or ground. Instead of considering possible new international legal authorities, the Sub-PCC concentrated on what could be done with existing ones. That meant an emphasis on national authorities and, later on, offers to help other governments if they needed to strengthen their national laws against proliferation. Melley has described the approach, espoused by Robert Joseph and Under Secretary of State for Arms Control and International Security John Bolton, as intended in essence to change international law through actions by sovereign nations to change their national legal authorities.¹⁶

Another lesson derived by the Sub-PCC was a requirement to reduce to a minimum the number of individuals aware of pending, possible, and, in many cases, completed interdiction actions. The Sub-PCC concluded that the public disclosure of the *So San* interdiction contributed directly to the failure of the operation and was almost inevitable, given the large numbers of U.S. Government officials who were informed of the intelligence and operational elements of the *So San* case as they unfolded in real time.¹⁷

After completing the analysis of lessons learned from the *So San*, the Sub-PCC turned to drafting proposed “rules of the road” for interdiction, which concentrated on the policy and legal aspects of how governments could work together to counter WMD and missile proliferation. The Proliferation Strategy PCC—the Assistant Secretary–level interagency group to which the Sub-PCC reported—approved the draft rules with some amendments. Joseph and Melley then prepared a package for Deputy National Security Advisor Stephen Hadley to send to the next interagency level, the Deputy Secretary/Under Secretary–level Deputies Committee. However, the package never went to the Deputies Committee. Instead, Hadley and National Security Advisor Condoleezza Rice took it directly to the President for his approval. Melley believes that they felt comfortable doing so because they were confident that the draft rules of the road constituted a good plan and outline of existing authorities, which had already been vetted by concerned agencies.¹⁸

Under those circumstances, there appeared little to be gained, and potentially much to be lost, from continuing to work the text through the bureaucracy. The draft rules of the road provided a solid foundation for the President to propose an international interdiction initiative in a major speech he was scheduled to give in Krakow, Poland, a few weeks later. Formal Deputies’ consideration of the document would delay the process, perhaps making it difficult to meet the Krakow timeline. Even more to the point, any broadening of the interagency community and lengthening of the time involved in considering the draft rules could increase the chances of media leaks. The White House staff wanted to avoid any such development that would blunt the political impact of the proposal—basically stealing the President’s thunder. More important, advance public knowledge of the

proposal could jeopardize its prospects. In this view, it would not be helpful if potential initiative partners learned of the proposal through the press rather than from confidential U.S. Government communications.¹⁹

The Krakow Proposal

The President promptly accepted the recommendation that he propose the PSI in his Krakow speech on May 31, 2003, based on the draft rules of the road. The NSC staff worked quietly to implement that decision. It is unclear whether—and, if so, how far—representatives from other agencies were involved in preparing the Krakow speech. At most, only one or two people below the cabinet level from the Departments of State and Defense were aware of the proposal.²⁰

The most important step between the President's approval and the Krakow speech was to identify the governments to be invited to implement the PSI proposal. The NSC staff wanted to keep that group small, but with fairly wide geographic distribution. Further, they looked for close partners, most with important maritime roles. The NSC staff initially proposed to invite eight governments: Australia, Italy, Japan, the Netherlands, Poland, Portugal, Spain, and the United Kingdom. All of those were members of the "coalition of the willing"—governments that supported the war in Iraq (at least initially) and provided some troops to the effort.²¹ In joining the coalition of the willing, those governments emphasized the requirement to end what was then almost universally believed to be an extensive Iraqi WMD program. In the NSC staff's view, they all had demonstrated their commitment to counter WMD and missile proliferation and their close partnership with the United States—while Iraq War opponents had failed to do so.

The President approved the eight governments on his staff's list but added two more: France and Germany.²² Those two important U.S. Allies were decidedly not members of the coalition of the willing; rather, they were the most vocal opponents of the war in Iraq. The President's motives for adding France and Germany to the invitation list are not known, but the following explanations appear plausible. First, the United States had a generally positive working relationship with France and Germany on WMD proliferation issues, especially the Iranian nuclear threat, and wanted to maintain and strengthen that cooperation. Second, Presi-

dent Bush may have hoped to move beyond the controversy and ill will among Allies that surrounded the Iraq War. Finally, he may have recognized that the exclusion of two such important Allies would have inevitably, and severely, limited the impact and international appeal of the new initiative.²³

Two members of the P-5 (the five permanent members of the United Nations Security Council also recognized in the Nuclear Non-Proliferation Treaty as nuclear weapon states) were not on the initial invitation list. The decision to exclude Russia was a conscious one. The NSC staff believed that Russia would make it difficult to reach agreement on the basic PSI parameters. They looked for eventual Russian participation in the initiative, but with founding principles that it would accept rather than shape.²⁴ Russia eventually joined PSI in spring 2004, about a year after the Krakow speech. In contrast, an invitation to China was never considered, probably because it was viewed as more of a proliferation problem than a partner.²⁵ In the years since the creation of PSI, the United States and other participants have repeatedly urged China to join the initiative, but without success.

A few days before the Krakow speech, Joseph and Melley met individually with either ambassadors to Washington or other senior representatives from each of the 10 initial PSI invitees, informing them of the coming proposal and providing a nonpaper based on the draft rules of the road. A more standard communications channel would have been a State Department cable to each of the concerned capitals, with a message to be delivered by the U.S. Embassy. The use instead of direct and separate meetings between the NSC staff and the partner ambassadors in Washington provides further evidence of the White House determination to keep the proposal confidential, limiting to the extent possible the number of U.S. Government officials who were aware of it. Moreover, it underscored the importance and high level of the U.S. proposal. PSI was presented as a *Presidential* initiative, not a routine product of the bureaucracy.

On May 31, 2003, President Bush officially proposed the PSI in his speech in Krakow:

When weapons of mass destruction or their components are in transit, we must have the means and authority to seize them. So today I

*announce a new effort to fight proliferation called the Proliferation Security Initiative. The United States and a number of our close allies, including Poland, have begun working on new agreements to search planes and ships carrying suspect cargo and to seize illegal weapons or missile technologies. Over time, we will extend this partnership as broadly as possible to keep the world's most destructive weapons away from our shores and out of the hands of our common enemies.*²⁶

The proposal was made very quickly by government standards—less than 6 months after the *So San* events. All 10 of the governments invited to participate in transforming the proposal into reality accepted, forming with the United States what became known as the initial PSI “Core Group.”

From Krakow to Paris: Creation of the Proliferation Security Initiative

The Players

The first international meeting on implementing President Bush's PSI proposal occurred with even greater speed, especially for the inaugural session of a multilateral group. The meeting took place in Madrid on June 12, 2003, less than 2 weeks after the Krakow speech.

Several mutually reinforcing factors appear to have facilitated that speed and the subsequent rapidity of the actual establishment of PSI. First was the identity of the 11 participating governments in the initial PSI Core Group. Most were longstanding allies: 9 were North Atlantic Treaty Organization (NATO) members, 6 were in the G-8, and 8 were in the European Union (EU). Of the non-NATO members, Australia had long and close alliance ties with the United Kingdom and the United States, and Japan with the United States.

Second was the timing of the PSI proposal. The nine Core Group members who were part of the coalition of the willing had firmly and publicly established their commitment to act against WMD and missile proliferation. France and Germany may have been eager to prove that they could work productively on is-

sues of common interest with the United States and other allies with whom they disagreed on Iraq. In turn, the United States and the other initial Core Group states may have welcomed the opportunity to demonstrate that they could cooperate with France and Germany. Moreover, all may have put a high priority on strengthening international counterproliferation capabilities that could in the future reduce the need to make the difficult choice of whether to combat proliferation through armed conflict.

Another important element was the decision not to include institutional representatives of the EU or NATO in the Core Group. John Bolton has argued that their inclusion would have slowed and even impeded progress, given the cumbersome decision processes and wide membership in each organization, as well as (in the EU case) the lack of relevant operational capabilities.²⁷ Ultimately, the EU was closely, if informally, involved in Core Group deliberations. Melley and Susan Burk, Acting Assistant Secretary of State for Nonproliferation Policy, traveled to Brussels after the first Core Group meeting in June 2003 to brief Robert Cooper (Director-General for External and Politico-Military Affairs at the General Secretariat of the EU Council) on the results. Thereafter, the EU was informally included at Core Group meetings as part of the delegation of the country then holding the EU presidency.²⁸

A further major factor facilitating the rapid establishment of PSI was the professional standing of the individuals involved in the Core Group. The heads of delegation to the first PSI meetings were all foreign ministry political directors or the equivalent who were well positioned to act quickly. All were senior officials with wide negotiating latitude and influence in their capitals, and most had a long history of working closely together in other bilateral and multilateral fora.

Three individuals stand out. First was William Ehrman, Director General for Defence and Intelligence in the United Kingdom Foreign Office. An exceptionally skilled diplomat, Ehrman had long been closely engaged in countering WMD and missile proliferation. Especially relevant for PSI was his simultaneous leading role in the small group of U.S. and UK officials working to counter the A.Q. Khan nuclear proliferation network and the Libyan WMD program. That work led to the October 2003 interdiction of a shipment on board the *BBC China* of

nuclear enrichment centrifuge equipment from the A.Q. Khan network to Libya, the unraveling of the network, and Libya's December 2003 decision to abandon its WMD and longer range missile programs.²⁹

Second was Stanislas de Laboulaye, Deputy Secretary General, Director General of Political Affairs and Security in the French Foreign Ministry. De Laboulaye also was closely involved in counterproliferation efforts, particularly regarding Iran. Unlike Ehrman, he was not engaged in a pending major interdiction case, and he may not have had the same driving commitment to the PSI concept. However, de Laboulaye was a first-rate diplomat who used those skills to good effect in the process leading to the creation of PSI.

Finally—and of greatest importance in the view of at least some former U.S. Government officials—the U.S. delegation was headed by Under Secretary of State John Bolton, whose hard-charging personal style and commitment to the PSI concept were essential in bringing about the rapid sequencing, action orientation, and speedy conclusion of the founding meetings.³⁰ Bolton's appointment was something of an accidental byproduct of an unrelated international development. The U.S. Government initially planned for Assistant Secretary of State for Non-proliferation John Wolf to lead the effort.³¹ However, on June 4, 2003, President Bush announced that Wolf would undertake a new role in the Middle East process.³² Secretary of State Colin Powell told the press that Wolf had known of the appointment for about 2 weeks³³—which would have been approximately a week or 10 days before the Krakow announcement of the PSI proposal.

With Wolf no longer available, Bolton took over as head of the U.S. delegation to the initial PSI meetings. For several reasons, the outcome of those meetings would have been different if Bolton had not been in charge. First, as an Under Secretary, Bolton was of equivalent rank to, and had long direct experience with, other leading players like Ehrman and de Laboulaye. Moreover, it is probable that other governments would have named assistant secretary-level officials to lead their PSI delegations if the United States did so. In that case, the heads of delegation would not have had the same standing and influence within their governments, and many would have lacked long experience in working with each other. Finally, there was Bolton's strong negotiating skill and style—often characterized as abrasive, but strikingly effective.

While Bolton headed the U.S. delegation, the NSC staff and the Department of Defense remained closely engaged in the process. Joseph was in continual communication with Bolton and with Assistant Secretary of Defense for International Security Policy J.D. Crouch, who had the lead for OSD on the issue. Melley attended all Core Group meetings and kept the pen on the draft rules of the road and reporting cables. Other senior officials from the Department of State, OSD, and the Joint Staff also had important roles in the meetings and Washington decisionmaking.³⁴

Initial Core Group Meetings

The first meeting of the PSI Core Group was appropriately hosted by the government of Spain, thus emphasizing the direct link between the initiative and the *So San* experience. To facilitate deliberations, Washington provided to the Core Group capitals, right after the Krakow announcement, a draft rules of the road document that was fuller than the nonpaper given to the 10 ambassadors before the Krakow speech and close to the internal U.S. Government document. In providing the draft to the Core Group governments, Washington described it not as a proposed final document, but as an initial basis from which to work.³⁵ According to Bolton, discussion at the Madrid meeting focused on the U.S. draft, which he characterized as “intended to describe the rights and obligations of sovereign nations concerning WMD interdictions, which we hoped the Core Group would adopt. If they did, we intended to distribute the text more generally, encouraging others to adhere to it for cooperation in future interdictions.”³⁶ Again, the focus of the effort was on national authorities rather than on a search for new international legal bases for interdiction. Bolton also makes clear that the United States intended the rules of the road to become the basic document of PSI.

Bolton has reported that “[w]e were surprised and encouraged at how constructive was the discussion [at the Madrid meeting] of the ‘rules of the road,’ which showed interdiction was widely, indeed enthusiastically supported within the Core Group.” Furthermore, to keep the process moving, the United States retained the pen on the document and encouraged participants’ input: “I said that, before the next meeting, we encouraged further comments on the ‘rules,’ which we would revise and distribute in advance.”³⁷

The Chairman's Statement issued at the close of the Madrid Core Group meeting was very general, but it established a foundation for subsequent discussion and decisions. In particular, it stated: "building on the Proliferation Security Initiative announced by U.S. President Bush May 31 in Krakow, participants agreed on the need to take more active measures to stop the flow of WMD and missiles to and from states and non-state actors of proliferation concern." The Madrid Statement also echoed President Bush's call in Krakow for broad PSI membership, stating that the initiative should group "all countries that are prepared to play a role in preventing this dangerous commerce, and that can contribute to proactive measures to interdict shipments."³⁸

The second PSI Core Group meeting took place in Brisbane, Australia, on July 9–10, 2003—just 1 month after the first meeting, and half a world away. The location was chosen in part to emphasize that "the PSI is a global Initiative with global reach."³⁹ As agreed at Madrid, the session began with meetings of three expert groups: diplomatic, military, and intelligence. The military group was immediately regularized, first as the Operational Experts Working Group under the Core Group, and then, beginning in December 2003, as the Operational Experts Group (OEG).⁴⁰ The OEG continues as the focal point of multilateral PSI activity. Moreover, at Brisbane, the military group decided on almost immediate action; they "agreed on PSI's first operational exercise, piggy-backing on an already-planned September naval exercise in the Coral Sea, marking an important milestone to prove that PSI would be the real thing, not just chitchat."⁴¹ The intelligence group was less successful. Participants reportedly were reluctant even to share information among the 11 initial Core Group members, preferring existing bilateral channels.⁴² As a result, no PSI intelligence experts group was created; instead, information would be shared only through regular channels: "If you need to know, you'll know."⁴³

The concluding statement from the Brisbane meeting demonstrated major progress toward actually implementing PSI. Offering far more details than the Madrid Statement, it addressed a range of practical issues, including interdiction modalities, training exercises, and the need for broad membership, especially by flag, coastal, and transit states. The Brisbane Statement also noted that PSI would

involve land and air, as well as maritime, interdiction. Finally, the Brisbane Statement emphasized that PSI would not detract from or replace existing nonproliferation agreements, but rather would strengthen the basis for their enforcement:

*The Brisbane meeting . . . emphasized that the increasingly aggressive and sophisticated efforts by proliferators to circumvent or thwart existing non-proliferation norms, and to profit from the trade of WMD and missiles or related items, requires new and stronger enforcement action by law-abiding nations. The PSI was therefore welcome as a necessary and innovative approach to the problem of countries which cheat on their international obligations, refuse to join existing regimes or do not follow international norms, and for non-state actors seeking to acquire WMD.*⁴⁴

The third Core Group meeting, in Paris on September 3–4, 2003, agreed on, and published, the Statement of Interdiction Principles—essentially the “constitution” for PSI. That outcome was exceptionally fast, just slightly over 3 months after the Krakow speech—a period that included the normally sacrosanct European summer vacation period. Knowledgeable former senior U.S. Government officials reported that the Statement of Interdiction Principles did not differ fundamentally from the initial U.S. draft; the text was fine-tuned by the Core Group rather than significantly altered.⁴⁵ Moreover, the U.S. delegation appeared to have driven the Paris meeting to issue the Statement of Principles. Joseph reportedly told Bolton that the United States needed concrete results from the Paris meeting.⁴⁶ One reason for the urgency cited by observers was the pending departure of the vessel *BBC China* for Libya (a fact known only to a restricted group of officials)—carrying a shipment that the United States and United Kingdom were determined would be interdicted. Another possible reason was the coming September 23 speech by President Bush to the United Nations General Assembly (UNGA). The NSC staff had already recommended that the President propose in his speech that the United Nations Security Council (UNSC) for the first time issue a resolution against WMD

proliferation. Agreement on PSI would facilitate passage of such a resolution, and perhaps even inclusion of provisions on interdiction.⁴⁷

During the first day of the Paris meeting, Core Group political experts considered the specifics of the draft Statement of Principles. Bolton then drove the text through the plenary meeting the next day. In order to help force a decision, on the night before the plenary, Bolton arranged with the U.S. Embassy in Paris to hold a press conference the next day. He told other Core Group members about the planned press conference, and also said that Washington would send a cable that night to all diplomatic posts announcing the PSI Statement of Principles. If governments were not yet ready to endorse the statement, the United States would take their names off the list. Some Core Group members strongly supported Bolton; others were very uncertain, wanting to fine-tune the document and/or to consult Russia and China first.⁴⁸ Ultimately, despite some grumbling, all Core Group members endorsed the Statement of Principles, and it was issued unanimously on September 4, 2003. Bolton's approach that day constituted "a blustery, high-handed move that worked."⁴⁹

Bolton and de Laboulaye contacted the Russian and Chinese governments immediately to inform them of the new Statement of Interdiction Principles. In response to a query from Russian Deputy Foreign Minister Sergei Kislyak, Bolton said that the text "was not carved in stone, but neither should he treat it as still being in the word processor."⁵⁰ Bolton reportedly also told other Core Group members that the statement could evolve over time as nations gained experience with PSI implementation. Actually, however, the United States would have opposed any changes to the statement. In any case, there appear to have been no proposals to amend the PSI Statement of Interdiction Principles after its issuance in September 2003.⁵¹

The Statement was purely political and created no new legal obligations. Indeed, it stressed that implementation must be "consistent with national legal authorities and relevant international law and frameworks."⁵² Although that might be viewed as a shortcoming, officials involved in the development and early activities of PSI maintain that the statement created an essential political basis for effective interdiction. In that regard, rather than expressing general support for

counterproliferation, the document outlines political commitments by each nation to take a series of actions against WMD and missile proliferation. Those include:

- ◆ “[u]ndertake effective measures, either alone or in concert with other states, for interdicting” proliferation transfers
- ◆ streamline procedures for sharing information on suspected proliferation
- ◆ take specific action to avoid proliferation from its own territory, interdict suspected proliferation shipments under its jurisdiction, “seriously consider” allowing others to board and search its flag vessels suspected of proliferation, interdict or deny overflight to suspected proliferant aircraft, and inspect and seize any proliferation transshipment cargoes.

In keeping with Joseph’s initial concepts for PSI, the “specific actions” to which the PSI participants committed are all ones for which sovereign states have clear authority under international law, involving their national territory, territorial waters, or vessels flying their national flag. The Statement also notes a requirement for cooperation among PSI states to deal with the more complex issue of interdiction outside of clear national jurisdiction. Thus, the Statement provides that interdictions may occur “at the request and good cause shown” by another state. That is, one PSI supporting state might acquire intelligence on a proliferation shipment, share that information with another PSI participant with legal authority for interdiction, and urge the latter to thwart the shipment. More generally, the first principle of the Statement calls quite simply for “effective measures” of interdiction—an umbrella statement urging action wherever possible, against all possible proliferation contingencies.

The targets of PSI interdictions were to be as broad as possible, addressing shipments of WMD, delivery systems, and related materials “to and from states and non-state actors of proliferation concern.” The Statement defines those broadly:

“States or non-state actors of proliferation concern” generally refers to those countries or entities that the PSI participants involved establish should be subject to interdiction activities because they are

engaged in proliferation through: (1) efforts to develop or acquire chemical, biological, or nuclear weapons and associated delivery systems; or (2) transfers (either selling, receiving, or facilitating) of WMD, their delivery systems, or related materials.

The Chairman's Conclusions issued by the fourth PSI meeting in October 2003 were even clearer about the broad targets of the initiative: "Participants agreed that the Initiative aimed to impede and stop trafficking of WMD, their delivery systems and related materials by any state or non-state actor engaged in or supporting WMD proliferation programmes, at any time and in any place."⁵³

The broad definition of PSI targets as any state or nonstate proliferators differed from initial U.S. Government aims for the Statement of Principles. U.S. officials wanted to "name names" of specific states of proliferation concern; other Core Group members disagreed.⁵⁴ In the end, the only instance of "naming names" was a brief mention in the chairman's statement from the July 2003 PSI meeting in Brisbane:

*PSI participants considered the question of states and non-state actors of proliferation concern. They referred to the relevant statements of the G-8 Evian summit on 1-3 June [2003] and the EU-U.S. Joint Statement on the Proliferation of Weapons of Mass Destruction of 25 June [2003] which addressed countries of proliferation concern and non-state actors with particular reference to North Korea and Iran.*⁵⁵

Furthermore, the PSI Statement of Interdiction Principles is notable for what it does not include. There is no mention of any organizational structure. No groups of member state representatives are created or explicitly envisaged, at senior or expert level, or in any area—diplomatic, military, law enforcement, or intelligence. There is no provision for a central secretariat or staff. No schedule or other system is set up for PSI meetings or training exercises. Indeed, those concepts are addressed in only the most indirect and general terms through calls to exchange

information about proliferation shipments, to build counterproliferation capacity and to coordinate interdiction efforts:

PSI participants . . . call on all states concerned with this [WMD and delivery system] threat to international peace and security to join in similarly committing to . . . [a]dopt streamlined procedures for rapid exchange of relevant information concerning suspected proliferation activity . . . dedicate appropriate resources and efforts to interdiction operations and capabilities and maximize coordination among participants in interdiction efforts.

Operation of the Proliferation Security Initiative

Adherence

The criteria—or perhaps more accurately, criterion—for participation in PSI were clarified over the next few months. The fourth Core Group meeting on October 10, 2003, decided that “participation in the PSI, which is an activity not an organization, should be open to any state or international body that accepts the Paris Statement of Principles and makes an effective contribution.”⁵⁶ In practice, there has been no requirement or standard for “effective contribution,” and no international body has yet participated.⁵⁷ Instead, leading PSI states have strived for the broadest possible support and have established acceptance of the Statement of Interdiction Principles as the only criterion for adherence. The ranks of supporters grew very quickly. By the fourth meeting of the Core Group, only a month after the Paris session, more than 50 states had endorsed the statement. That number grew to over 60 by March 2004, over 75 by June 2006, 91 by May 2008, and 98 by September 2010 (see appendix for a list of PSI participants). Participation carries no obligations, legal or otherwise, but it does represent at least rhetorical acceptance at the highest government levels of the need to counter the proliferation threat, both domestically and through international cooperation.

While PSI support is widespread, it is also uneven. All European states except Monaco participate, but only 3 sub-Saharan African and 13 Western Hemisphere countries have joined. Key states that have not subscribed to PSI include Brazil, China, Egypt, India, Indonesia, Malaysia, Mexico, Pakistan, and South Africa. South Korea was a notable late addition to the PSI ranks. Seoul had long refused to join PSI, reportedly out of a desire to avoid antagonizing North Korea, but changed course immediately after the second North Korean nuclear test in May 2009. Three states have joined PSI since South Korea did so: Colombia, Antigua and Barbuda, and St. Vincent and the Grenadines. Some U.S. officials expect few other new adherents in the foreseeable future, with the possible (and important) exceptions of Mexico, and perhaps even Indonesia and Malaysia.⁵⁸

Structure

Although the Core Group was never officially established, it continued to lead PSI until spring 2004. By that time, the Core Group had expanded to 15 states from the original 11, with the addition of Canada, Norway, Singapore, and Russia. As PSI participation continued to grow, the Core Group concept became increasingly difficult to sustain. Because the Core Group was not officially constituted, it had neither fixed membership nor arrangements for future membership changes. Moreover, it had welcomed the addition of four new members. As a result, several new PSI participants believed that they too should be added to the Core Group rather than be consigned to what they perceived as second-class citizenship. Yet significant growth in the Core Group would make it too unwieldy for the rapid, consensus decisionmaking that leading PSI participants hoped to retain as a hallmark of the initiative.

The upshot was the disappearance of the Core Group. Knowledgeable U.S. Government officials maintain that there was never an explicit collective decision to terminate the Core Group; it simply did not meet again.⁵⁹ In the absence of the Core Group, PSI political meetings became largely ceremonial affairs, marking anniversaries of the Krakow proposal, to which all initiative participants were invited. Three such sessions have been held thus far: in Krakow on June 1, 2004; Warsaw on June 23, 2006; and Washington on May 28, 2008.

While those meetings may have had political value—keeping public focus on PSI and reinforcing the commitment of participating states—they were too large for effective decisionmaking.

The only regular, action-oriented PSI meetings since the end of the Core Group have been those of the OEG, whose origins lay in the military breakout session at the Brisbane meeting in July 2003. The OEG grew slightly more than the Core Group but remained for some years at 20 participants: the final 15 Core Group states plus Argentina, Denmark, Greece, New Zealand, and Turkey. In 2010, South Korea was added for a total of 21. The members were chosen for their political importance, involvement in international shipping, strength of their commitment to PSI, and/or regional distribution. All have been active OEG and PSI participants except for Russia and Argentina, which were included in the OEG mainly because of the political and regional factors, respectively.

The OEG aims to translate the PSI principles into action, through such activities as planning and conducting exercises, identifying available and required interdiction capabilities, and sharing lessons learned from exercises and actual interdictions. In early 2004, the OEG expanded to include breakout groups of law enforcement and intelligence officials. It did so in response to a February 2004 proposal by President Bush for PSI expansion to law enforcement⁶⁰ that was endorsed at the fifth PSI Core Group meeting the following month.⁶¹

In its first years, the OEG met three to five times a year in plenary, with a few additional regional meetings and sectoral workshops.⁶² In order to encourage more active PSI involvement by non-OEG participants, the OEG planned in late 2008–early 2009 to meet less often in full session and more frequently in broad regional meetings. However, only two regional sessions and one full OEG were held in 2009. In 2010, there was just one regional and one full OEG meeting. The same is planned for 2011; one regional OEG was held in Hawaii in June, and a full OEG is scheduled for Berlin in November. Thus, there has been a noticeable drop-off in the frequency of OEG meetings; the full OEG now meets less often, as planned, but the promised regional sessions have been less frequent than originally envisaged. The U.S. Government still hopes for a sustained increase in regional OEG meetings.⁶³

President Barack Obama endorsed PSI and called for its enhanced institutionalization in his first major speech on proliferation and arms reduction on April 5, 2009, in Prague: “We must also build on our efforts to break up black markets, detect and intercept materials in transit, and use financial tools to disrupt this dangerous trade. Because this threat will be lasting, we should come together to turn efforts such as the Proliferation Security Initiative and the Global Initiative to Combat Nuclear Terrorism into durable international institutions.”⁶⁴ The next day, Deputy Secretary of State James Steinberg expanded on the President’s speech, noting, “Both PSI and the Global Initiative have been run so far on a highly informal and decentralized basis and could benefit from having small central mechanisms to help coordinate their activities.”⁶⁵

The steps taken by the Obama administration to “institutionalize” PSI would not change the basic character of the initiative as “an activity, not an organization.” During the May 2009 Global and Western Hemisphere OEG and Outreach Meeting, the United States proposed the designation of a PSI focal point. At the time, administration officials indicated that establishment of a focal point would support the goal set in the President’s Prague speech to make PSI a “durable international institution.” The proposal was formally adopted by the OEG in Tokyo in November 2010. Under the system, one OEG member government acts as a central point of contact for distributing documents, setting schedules, and so forth.⁶⁶

The United States is the first focal point. U.S. officials report that the system would be more effective if PSI had a participants-only information portal similar to the one developed and operated for the Global Initiative to Combat Nuclear Terrorism by the U.S. Defense Threat Reduction Agency. Germany volunteered several years ago to create such a Web site but has had difficulty developing a useful system that meets participants’ requirements.⁶⁷

Exercises

Until recently, the decline in PSI activity was particularly noticeable in the exercise area. Since 2003, there have been about 50 PSI exercises, including dedicated live exercises, command post (or tabletop) exercises, and inclusion of PSI

scenarios in regular regional exercises. Most have focused on maritime capabilities, but several have concerned ground, air, and/or port interdictions.

Through 2010, the number of PSI exercises declined significantly. Four were held from September through November 2003, nine in 2004, six each in 2005, 2006, and 2007, five in 2008, and four each in 2009 and 2010. A significantly larger number—eight—was planned for 2011, and six for 2012.⁶⁸ One cause for the substantial decrease through 2010 may have been “initiative fatigue” as initial enthusiasm faded. Another may have been budget stringencies, especially given global economic difficulties and the fact that few if any participants have dedicated PSI budgets. A third may have been the absence of incentives to action that resulted from frequent PSI group consultations. Finally, some officials believe that PSI adherents perceive little value—at least relative to the cost—in live maritime interdiction exercises when the number of actual interdictions at sea is quite small.⁶⁹

U.S. officials do not believe that the planned increases in 2011 and 2012 represent the start of a new upward trend. Instead, they forecast that the number of exercises will continue to fluctuate.⁷⁰ In any case, the exercises planned for 2011 and 2012 reflect at least one adjustment to continuing budget constraints: plans call for fewer dedicated live PSI exercises and more (comparatively affordable) tabletop exercises, as well as injection of PSI scenarios into more general, regularly scheduled exercises.

In another, perhaps less costly, means to help build PSI interdiction capabilities, OEG partners in June 2011 approved a U.S. proposal to undertake a Critical Capabilities and Practices (CCP) initiative. The U.S. Department of State describes the initiative as a:

*cooperative and voluntary effort to offer support to all PSI-endorsing states in strengthening their critical interdiction capabilities and practices. OEG countries who volunteer to participate in the CCP effort will do so by identifying and sharing tools and resources that support interdiction related activities and by conducting events in a coordinated manner to develop, implement, and exercise CCPs.*⁷¹

If the CCP promise is realized, it could both enhance PSI adherents' interdiction capabilities and revive their interest in, and focus on, the initiative's practical purposes. The four areas reportedly planned for the CCP span the full range of interdiction-related requirements: legal frameworks, identification and inspection, seizure and disposal, and rapid decisionmaking. The German hosts of the November 2011 OEG meeting plan to focus on CCP implementation.⁷²

Interdictions

Perhaps the most important measure of PSI's impact, at least politically, is provided by actual interdictions. The issue is controversial and uncertain, for at least two reasons. First, PSI participants provide little public information about interdiction successes and none about failures. Many—perhaps most—member states are reluctant to publicize their military and intelligence capabilities and shortcomings. At least some are loath to incur political controversy in their home countries or regions through known participation in PSI interdictions. What public information has been released on interdictions has been incomplete and episodic. In a May 2008 press briefing, Acting Under Secretary of State for Arms Control and International Security John Rood offered a typically vague description of PSI interdictions, as well as an explanation for the lack of more detailed public information: “We literally had dozens of successful interdictions of items and technologies bound for countries of concern. We necessarily keep most of these successes confidential. We’re sharing intelligence information among parties. In some cases, it’s easier for countries to take action if the results will not be publicized.”⁷³

Second, there is a question as to what exactly constitutes an interdiction. For example, in May 2011, the U.S. Navy began shadowing the *M/V Light*, a vessel carrying a suspect North Korean proliferation cargo bound for Burma. Somewhat inexplicably, the North Koreans used a Belize-flagged vessel for the purpose; Belize not only adheres to the PSI, but also has concluded a shipboarding agreement with the United States. Eventually, rather than risk being boarded, the ship turned around and returned to North Korea, never reaching its intended destination.⁷⁴ Because no boarding or military confrontation occurred,

some observers conclude that the *M/V Light* case was not an interdiction. Yet it fit a common dictionary definition of *interdiction* as *prohibition*;⁷⁵ the proliferation cargo was effectively prohibited from reaching its intended customer.

Third, there is the classic problem that it is virtually impossible to prove what might have been in the absence of a new element like PSI. As the *So San* events demonstrate, many PSI partners cooperated long before the initiative in efforts to prevent and counter WMD and missile proliferation, including through interdiction. The question is whether PSI facilitated such actions after its creation, or allowed some that would not have been possible without it. The interdiction of the *BBC China*, probably the best known case since the creation of PSI, clearly demonstrates that difficulty. In October 2003, the United States and United Kingdom alerted Germany and Italy to a clandestine cargo of nuclear enrichment centrifuge components on the German-registered vessel. The equipment had been shipped by the A.Q. Khan proliferation network and was destined for Libya. The United States and United Kingdom asked that the ship be diverted to an Italian port and searched and seized there. The German and Italian governments agreed without delay; Germany had sovereign authority over a vessel flying its flag, and Italy over ships in its port. The interdiction was successful not just in the important, immediate sense of preventing proliferation of nuclear weapons-related equipment, but it also led directly to the unraveling of the A.Q. Khan network and to Libya's December 2003 decision to abandon its WMD and longer range missile programs.

PSI supporters credit the *BBC China* interdiction as a major success for the initiative. Critics are more skeptical, arguing that the four states involved would have acted against the shipment without PSI; they note that each of those states had taken counterproliferation actions before PSI, and that the initiative did not create any new legal authorities or obligations for the participants.⁷⁶ However, one former senior U.S. official who was closely involved in the *BBC China* events has indicated that, at a minimum, PSI adherence facilitated the decision to interdict: "When first approached, Berlin and Rome immediately agreed to assist in the operation—both citing their status as core members of the recently established PSI."⁷⁷ Even more difficult to prove is whether and to what extent PSI

has thwarted proliferation at the source, by deterring potential shippers and/or removing available transport means (for example, by denying overflight rights).

Finally, proliferation interdictions or successful action to prevent shipments in the first place may be difficult to replicate. Proliferators learn to change practices in order to enhance their chances of success. In general, PSI must continually adapt to close off new proliferation avenues. One means to do so may be through the CCP initiative, if it succeeds in its goal of widespread counterproliferation capacity-building.

Legal Frameworks

Another potential means to increase PSI capabilities, which has thus far proved largely elusive, is to expand national and international authorities against proliferation. Some PSI partners, such as Singapore, have bolstered their national laws against proliferation since joining the initiative. Further, OEG members share information about participants' national authorities to help identify a state or states that would have interdiction authority in a specific proliferation case.⁷⁸

An important milestone in expanding (if only slightly) the legal bases for proliferation interdiction was the July 2010 entry into force of the amended Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA Convention) and its 2005 protocol. The protocol prohibits deliberate maritime shipment of WMD or related materials, equipment, and technology (with the exception of nuclear material and equipment allowed under the Nuclear Nonproliferation Treaty and International Atomic Energy Agency safeguards). Further, the protocol provides for boarding a ship reasonably suspected of proliferation, but only with flag state consent.⁷⁹ The amended SUA Convention entered into force after the twelfth state ratified; the protocol automatically followed suit, because three parties to the amended SUA Convention also adhered to the protocol. Although the entry-into-force requirements were met, relatively few states have adhered to the amended convention (20) and the protocol (16). The United States is not yet among them, although the Senate gave its advice and consent to ratification in September 2008.⁸⁰ In March 2010, the Obama administration submitted draft implementing

legislation to Congress, whose enactment would permit ratification. Because the 111th Congress failed to act, the administration resubmitted the draft to the new Congress in April 2011.⁸¹

In September 2010, the International Civil Aviation Organization (ICAO) adopted a comparable treaty, a few years after Australia proposed a WMD amendment to the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (Montreal Convention 1971).⁸² ICAO chose to adopt a stand-alone agreement—the Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation (known as the Beijing Convention)—rather than to amend the Montreal Convention 1971. The agreement focuses on criminalization and does not mention specific (or new) measures that states may take to prevent illegal WMD transport. Instead, it simply states that “States Parties shall, in accordance with international and national law, endeavour to take all practicable measures for the purpose of preventing the offences set forth in Article I.”⁸³ The convention is to enter into force 1 month after 22 states have ratified. As of August 2011, only 21 states had signed, and none had ratified.⁸⁴ The U.S. administration reportedly is preparing a package to submit the Beijing Convention to the Senate for advice and consent to ratification. However, early Senate action is not expected, if only because of the press of other business.⁸⁵

United Nations Security Council Resolution (UNSCR) 1874, adopted on June 12, 2009, after the May 2009 North Korean nuclear test, includes an important interdiction component, one that closely resembles the provisions of the 2005 SUA Protocol. Each member state is encouraged to inspect cargo in its territory coming from or going to North Korea if there is reason to suspect the cargo includes WMD, missiles, or related material or equipment. The resolution also calls on member states to inspect vessels on the high seas if they are reasonably suspected of carrying prohibited cargo to or from North Korea, but that can be done only with the consent of the flag state. Further, the resolution authorizes member states to seize and dispose of any prohibited cargo they discover. Moreover, bunkering services are to be denied to questionable North Korean vessels, except for humanitarian reasons or after the cargo has been inspected.⁸⁶ In June 2010, the

Security Council included a similar provision in UNSCR 1929, the most recent resolution on the Iranian nuclear program.

Even before the Statement of Interdiction Principles was issued, the original PSI partners discussed among themselves the usefulness of ship-boarding agreements with flag registry states, inspired at least in part by the experience of the U.S. Navy and Coast Guard in counterdrug operations.⁸⁷ On February 11, 2004, the United States signed the first such agreement with Liberia, which has the world's second largest ship registry. On May 12, 2004, the United States signed a similar agreement with Panama, which has the world's largest ship registry. Comparable agreements were signed subsequently with several other flag states: Antigua and Barbuda, the Bahamas, Belize, Croatia, Cyprus, Malta, Marshall Islands, Mongolia, and St. Vincent and the Grenadines. Although all the signatories are PSI participants, none is in the OEG. The agreements seek to facilitate rapid interdiction action by detailing procedures to board and search ships flying their flags that are suspected of carrying proliferation cargo.⁸⁸

The ship-boarding agreements and UNSCRs 1874 and 1929, like the PSI itself, may facilitate and accelerate interdictions of proliferation shipments. The 2005 SUA Protocol and the 2010 Beijing Convention reinforce the illegitimacy of WMD proliferation. However, none of these—and no likely near-term future agreements—would significantly expand clear legal authorities for interdicting WMD and missile proliferation shipments.

Conclusion

President Obama's strong public support for PSI in his April 2009 speech removed one major uncertainty regarding the future of the initiative: whether the new U.S. administration would remain committed to a policy and process closely associated with its predecessor. In doing so, the President probably reduced, if not eliminated, any remaining concern that PSI would circumvent or undermine existing nonproliferation regimes. President Bush and leading officials in his administration involved in PSI—most prominently Bolton—often strongly criticized multilateral institutions. The same cannot be said for President Obama and his administration.

However, more than rhetorical support will be needed to maintain and advance the PSI as an effective counterproliferation mechanism. Following is a partial list of steps required:

- ◆ The United States and other leading PSI states should lead an effort to increase the number of regional OEG meetings and to sustain over time the increase in exercises planned for 2011–2012.
- ◆ A concerted campaign should be undertaken to implement the CCP initiative fully. As recommended by the National Academy of Sciences, the revised and expanded Cooperative Threat Reduction program of the Department of Defense could be used to help build counterproliferation capabilities in PSI partner states,⁸⁹ including through the CCP effort. The same is true of other U.S. Government programs, like the State Department's Export Control and Border Security program, and of the G–8 Global Partnership against the Spread of Weapons and Material of Mass Destruction. The U.S. presidency of the G–8 in 2012, followed by the United Kingdom in 2013, provides an important opportunity to seek to channel Global Partnership assistance to this new area. UNSCR 1540 imparts valuable legitimacy to use of global partnership assistance for PSI purposes. The G–8 Summit in 2010 and 2011 identified UNSCR 1540 implementation as one of four focus areas for the expanded and extended global partnership; as discussed above, UNSCR 1540 encourages multilateral interdiction cooperation, even if not in strong terms.
- ◆ A greater effort is also required to strengthen the international legal bases for interdiction. Once the United States has deposited its own instrument of ratification, it should lead in seeking broader adherence to the 2005 Protocol to the Amended Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Protocol). The United States and other leading PSI partners should also work actively for entry into force of the Beijing Convention; an essential start would be its submission to the Senate for advice and consent to ratification. To the

extent possible and required, the United Nations Security Council should be encouraged to endorse and advance interdiction against proliferators, as it did for the first time in Resolution 1540 and much more directly in Resolutions 1874 and 1929.

- ◆ Outreach to encourage new PSI members should also be continued. The addition of coastal states worldwide and of states with significant WMD- and missile-related industries would expand the collective PSI legal authority for interdiction and progressively restrict the PSI-free routes open to proliferators.

The period in which the PSI was developed and began operating was marked by unusual speed and effectiveness. The challenge will be to restore and maintain that commitment and momentum over the long term. Some U.S. Government officials report that interdiction activities are robust, while PSI events are increasingly rare and declining steadily in importance. Others disagree with that assessment.⁹⁰ In some respects, the regularization of counterproliferation interdictions outside any framework would be a welcome development. On the other hand, it is doubtful that such interdictions have gained enough international acceptance and standing that they no longer require a PSI catalyst. Testing either proposition through increasing atrophy of PSI activities would be a risky undertaking.

PSI's character as "an activity not an organization" is fundamental and necessary, but absent sustained leadership, it can be at least as much of a weakness as a strength. The benefits are clear in terms of flexible, rapid, nonbureaucratic response to proliferation threats. Yet there is an equally clear danger that PSI will become increasingly irrelevant if it does not serve as a central focus for—and impetus to—vigorous, sustained action. In the absence of an established institutional framework, PSI's future depends on the commitment, leadership, and activism of its key members. One U.S. official involved in the founding and early years of PSI summed up the problem very well: "PSI is like a shark. It must keep moving or it will die."⁹¹

Appendix. States Endorsing the Proliferation Security Initiative Statement of Interdiction Principles as of September 10, 2010

| | | |
|---------------------|------------------|----------------------------|
| Afghanistan | Georgia | Panama |
| Albania | Germany | Papua New Guinea |
| Andorra | Greece | Paraguay |
| Angola | Holy See | Philippines |
| Antigua and Barbuda | Honduras | Poland |
| Argentina | Hungary | Portugal |
| Armenia | Iceland | Qatar |
| Australia | Iraq | Romania |
| Austria | Ireland | Russia |
| Azerbaijan | Israel | Samoa |
| Bahamas | Italy | Saudi Arabia |
| Bahrain | Japan | San Marino |
| Belarus | Jordan | Serbia |
| Belgium | Kazakhstan | Singapore |
| Belize | Kuwait | Slovakia |
| Bosnia | Kyrgyzstan | Slovenia |
| Brunei Darussalam | Latvia | South Korea |
| Bulgaria | Liberia | Spain |
| Cambodia | Libya | Sri Lanka |
| Canada | Liechtenstein | St. Vincent and Grenadines |
| Chile | Lithuania | Sweden |
| Colombia | Luxembourg | Switzerland |
| Croatia | Macedonia | Tajikistan |
| Cyprus | Malta | Tunisia |
| Czech Republic | Marshall Islands | Turkey |
| Denmark | Moldova | Turkmenistan |
| Djibouti | Mongolia | Ukraine |
| El Salvador | Montenegro | United Arab Emirates |
| Estonia | Morocco | United Kingdom |
| Fiji | Netherlands | United States |
| Finland | New Zealand | Uzbekistan |
| France | Norway | Vanuatu |
| | Oman | Yemen |

Source: U.S. Department of State, available at <www.state.gov/t/isn/c27732.htm>.

Notes

¹ For discussion of the interdiction of the *So San*, the events leading up to it, and its immediate aftermath, see: Ari Fleischer, Press Briefing, White House Office of the Press Secretary, December 11, 2002; “Dangerous Cargo,” *Online News Hour with Jim Lehrer Transcript*, December 11, 2002; Brian Knowlton, “Ship Allowed to Take North Korea Scuds on to Yemeni Port: U.S. Frees Freighter Carrying Missiles,” *International Herald Tribune*, December 12, 2002; Robert Marquand and Peter Force, “The Unprecedented Seizure Monday of a Ship Carrying North Korean Missiles Highlights U.S. Preemption Doctrine,” *Christian Science Monitor Online*, December 12, 2002; and William Safire, “Bush’s Stumble: The So San Affair,” *The New York Times*, December 19, 2002.

² See, for example, Craig H. Allen, *Maritime Counterproliferation Operations and the Rule of Law*, Praeger Security International Reports (Westport, CT: Praeger), 152.

³ See <<http://combinedmaritimeforces.com/ctf-150-maritime-security/>>. Originally a formation of the U.S. Navy, Combined Task Force 150 became multinational after September 11, 2001. Participants have included Australia, Canada, Denmark, France, Germany, Italy, the Netherlands, New Zealand, Pakistan, Portugal, Singapore, South Korea, Spain, Turkey, the United Kingdom, and the United States. Task Force command rotates among the participants on a 4- to 6-month basis.

⁴ Interview, Robert G. Joseph, former White House National Security Council (NSC) staff official, December 2009.

⁵ Fleischer.

⁶ Allen, 151.

⁷ David B. Rivkin, Jr., and Lee A. Casey, “From the *Bermuda* to the *So San*,” *National Review Online*, January 2, 2003.

⁸ Interview, Joseph, December 2009.

⁹ John Bolton offers a different view, arguing that legal concerns were central to the decision to release the *So San*: “Many pointed to weakness from the NSC’s lawyer, John Bellinger, his typical reaction to difficult circumstances, but the larger issue was the general chaos and confusion within the administration, in which fear from the lawyers had caused panic.” John Bolton, *Surrender Is Not an Option: Defending America at the United Nations and Abroad* (New York: Simon and Schuster, 2007), 121.

¹⁰ Interview, Joseph, December 2009.

¹¹ *National Strategy to Combat Weapons of Mass Destruction* (Washington, DC: The White House, December 2002), 2.

¹² Ibid.

¹³ In a somewhat exaggerated expression of the tendency at the time to see a range of national security issues through an Iraq lens, the *New York Post* headline on December 11, 2002, reporting on the publication of the *National Strategy to Combat Weapons of Mass Destruction*, read: “Bush Warns Iraq: We’ll Nuke You.”

¹⁴ See, for example, “No Chemical Arms Aboard China Ship,” *The New York Times*, September 6, 1993, and “China Says U.S. Is Harassing Ship Suspected of Taking Arms to Iran,” *The New York Times*, August 9, 1993.

¹⁵ Interview, Brendan Melley, former NSC staff official, December 2009.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Ibid.

²¹ The Iraq War began on March 19, 2003, just 2 months before President Bush’s Krakow speech.

²² Interviews, Joseph, December 2009 and Melley, December 2009.

²³ Ibid.

²⁴ Ibid.

²⁵ Ibid.

²⁶ George W. Bush, Remarks by the President to the People of Poland, Wawel Royal Castle, Krakow, Poland, May 31, 2003, available at <<http://georgewbush-whitehouse.archives.gov/news/release/2003/05/20030531-3.html>>.

²⁷ Bolton, 122–123.

²⁸ Interview, Melley, January 2010.

²⁹ Interview, Joseph, December 2009, and Robert G. Joseph, *Countering WMD: The Libyan Experience* (Fairfax, VA: National Institute Press), 2009. See below for further discussion of the *BBC China* interdiction.

³⁰ Interview, Melley, December 2009.

³¹ Interview, Joseph, December 2009.

³² “President Meets with Leaders of Jordan, Israel, and Palestinian Authority,” Office of the Press Secretary, June 4, 2003, available at <<http://georgewbush-whitehouse.archives.gov/news/releases/2003/06/20030604-1.html>>. Wolf’s official title in the Middle East role was Chief, U.S. Coordination and Monitoring Missions for the Roadmap for Peace in the Middle East.

³³ “Powell, Rice Discuss Road Map for Peace in the Middle East,” Office of the Press Secretary, June 4, 2003, available at <<http://georgewbush-whitehouse.archives.gov/news/releases/2003/06/20030604.html>>.

³⁴ Interview, Melley, December 2009.

³⁵ Ibid.

³⁶ Bolton, 123. Bolton attributes the draft rules of the road to DOD; other former officials say that is inaccurate, that both the internal document and the one provided to Core Group members were drafted by the NSC staff.

³⁷ Ibid.

³⁸ “Proliferation Security Initiative: Chairman’s Statement at the First Meeting of the PSI, June 12, 2003,” Foreign Ministry of Spain, Madrid, Spain, available at <www.state.gov/t/isn/115302.htm>.

³⁹ “Proliferation Security Initiative: Chairman’s Statement at the Second Meeting of the PSI, July 9–10, 2003,” Foreign Ministry of Australia, Brisbane, Australia, available at <www.state.gov/t/isn/115303.htm>.

⁴⁰ Interview, David A. Cooper, former OSD official, December 2008.

⁴¹ Bolton, 124.

⁴² Interview, Melley, December 2009.

⁴³ Ibid.

⁴⁴ “Chairman’s Statement at the Second Meeting of the PSI.”

⁴⁵ Interview, Melley, December 2009.

⁴⁶ Ibid.

⁴⁷ Interviews, Joseph and Melley, December 2009. President Bush’s proposal in his United Nations General Assembly speech for a new Security Council resolution against proliferation was presented as follows, linked directly to PSI:

We’re also improving our capability to interdict lethal materials in transit. Through our Proliferation Security Initiative, 11 nations are preparing to search planes and ships, trains and trucks carrying suspect cargo, and to seize weapons or missile shipments that raise proliferation concerns. These nations have agreed on a set of interdiction principles, consistent with legal—current legal authorities. And we’re working to expand the Proliferation Security Initiative to other countries. We’re determined to keep the world’s most destructive weapons away from all our shores, and out of the hands of our common enemies.

Because proliferators will use any route or channel that is open to them, we need the broadest possible cooperation to stop them. Today, I ask the UN Security Council to adopt a new anti-proliferation resolution. This resolution should call on all members of the UN to criminalize the proliferation of weapons—weapons of mass destruction, to enact strict export controls consistent with international standards, and to secure any and all sensitive materials within their own borders. The United States stands ready to help any nation draft these new laws, and to assist in their enforcement.

The President’s proposal was largely implemented in UNSCR 1540, passed on April 28, 2004. UNSCR includes the three elements of criminalization of WMD proliferation, but only by nonstate actors; enactment and enforcement of strict export controls; and security of WMD and related materials. UNSCR 1540 also endorses PSI-type multilateral cooperation against proliferation, but only as voluntary action. Operative Paragraph 10 provides: “Further to counter that threat, *calls upon* all States, in accordance with their

national legal authorities and legislation and consistent with international law, to take cooperative action to prevent illicit trafficking in nuclear, chemical or biological weapons, their means of delivery, and related materials.” United Nations Security Council Resolution 1540 (2004), April 28, 2004, S/RES/1540 (2004).

⁴⁸ Interview, Melley, December 2009, and Bolton, 126.

⁴⁹ Interview, Melley, December 2009.

⁵⁰ Bolton, 126.

⁵¹ Interview, Melley, December 2009.

⁵² Fact Sheet, “Proliferation Security Initiative: Statement of Interdiction Principles,” The White House, Office of the Press Secretary, Washington, DC, September 4, 2003, as reported at <www.state.gov/t/isn/c27726.htm>. All following quotations from the Statement of Interdiction Principles and descriptions of the text are from the same source.

⁵³ “Proliferation Security Initiative: Chairman’s Conclusions at the Fourth Meeting.”

⁵⁴ Interview, Melley, January 2010.

⁵⁵ “Proliferation Security Initiative: Chairman’s Statement at the Second Meeting.”

⁵⁶ “Chairman’s Conclusions at the Fourth Meeting.”

⁵⁷ That may change. Some U.S. officials expect that the European Union will soon adhere to PSI in its own stead, rather than through the rotating EU presidency state. Interview, Department of State officials, September 2011.

⁵⁸ Interview, Department of State officials, September 2011.

⁵⁹ Interview, Melley, December 2009.

⁶⁰ *I propose that the work of the Proliferation Security Initiative be expanded to address more than shipments and transfers. Building on the tools we’ve developed to fight terrorists, we can take direct action against proliferation networks. We need greater cooperation not just among intelligence and military services, but in law enforcement, as well. PSI participants and other willing nations should use the Interpol and all other means to bring to justice those who traffic in deadly weapons, to shut down their laws, to seize their materials, to freeze their assets.*

White House, Office of the Press Secretary, “President Announces New Measures to Counter the Threat of WMD: Remarks by the President on Weapons of Mass Destruction Proliferation,” February 11, 2004, available at <<http://georgewbush-whitehouse.archives.gov/news/releases/2004/02/20040211-4.html>>.

⁶¹ “Chairman’s Statement at the Fifth Meeting, Palacio Foz, Lisbon, Portugal, March 5, 2004,” available at <www.state.gov/t/isn/115306.htm>:

Participants supported the call by U.S. President Bush to expand the role of the PSI to not only interdict shipments of WMD, their delivery systems and related materials, but to cooperate in preventing WMD proliferation facilitators (i.e., individuals, companies, and other entities) from engaging in this deadly trade. . . . Participants agreed to pursue greater cooperation through military and intelligence services and law

enforcement to shut down proliferation facilitators and bring them to justice. PSI participants agree to begin examining the key steps necessary for this expanded role, including: identifying national points of contact and internal processes developed for this goal; developing and sharing national analyses of key proliferation actors and networks, their financing sources, and other support structures; undertaking national action to identify law enforcement authorities and other tools or assets that could be brought to bear against efforts to stop proliferation facilitators.

⁶² For a list of OEG meetings, see <www.state.gov/t/isn/c27700.htm>.

⁶³ Interviews, Department of State officials, April 2010 and September 2011.

⁶⁴ The White House, Office of the Press Secretary, "Remarks by President Barack Obama, Hradcany Square, Prague, Czech Republic, April 5, 2009," available at <www.whitehouse.gov/the_press_office/Remarks-By-President-Barack-Obama-In-Prague-As-Delivered.html>.

⁶⁵ James B. Steinberg, Carnegie International Nonproliferation Conference, Washington, DC, April 6, 2009, available at <www.carnegieendowment.org/events/nppcon2009>.

⁶⁶ Interviews, Steven Schleien, OSD official, June 2009, and Department of State officials, September 2011.

⁶⁷ Interviews, Department of State officials, September 2011.

⁶⁸ A list of PSI exercises through 2010 is available at <www.state.gov/t/isn/c27700.htm>. Information on exercises in 2011 and 2012 has not been published, but was shared with the author by the Department of Defense in June 2011.

⁶⁹ Interview, Department of State officials, September 2011.

⁷⁰ Ibid.

⁷¹ U.S. Department of State, Bureau of International Security and Nonproliferation, "PSI-Endorsing States Undertake Effort to Build Critical Capabilities and Practices for Interdicting WMD," Fact Sheet, June 10, 2011, available at <www.state.gov/t/isn/166732.htm>.

⁷² Interviews, Benjamin Schwartz, OSD official, September 2011, and Department of State officials, September 2011.

⁷³ "Proliferation Security Initiative: John Rood, Acting Under Secretary of State for Arms Control and International Security," Foreign Press Center Roundtable Briefing, Washington, DC, May 27, 2008, available at <<http://2002-2009-fpc.state.gov/105206.htm>>.

⁷⁴ See, for example, David E. Sanger, "U.S. Said to Turn Back North Korea Missile Shipment," *The New York Times*, June 12, 2011, available at <www.nytimes.com/2011/06/13/world/asia/13missile.html>.

⁷⁵ See, for example, "Interdiction," *Webster's Online Dictionary*, available at <www.websters-online-dictionary.org/definitions/interdiction>. The point is reinforced by the extended definition given by the same source: "The purpose of interdiction is to delay, disrupt, or destroy enemy forces or supplies en route to the battle area."

⁷⁶ See, for example, Wade Boese, “Key U.S. Interdiction Initiative Claim Misrepresented,” *Arms Control Today* 35 (July–August 2005).

⁷⁷ Joseph, 41.

⁷⁸ Interviews, Cooper, December 2008, and Joseph Benkert, former OSD official, December 2008.

⁷⁹ International Maritime Organization, International Conference on the Revision of the SUA Treaties, “Adoption of the Final Act and any Instruments, Recommendations and Resolutions Resulting from the Work of the Conference: Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation,” LEG/CONF.15/21, November 1, 2005.

⁸⁰ The 16 states that have ratified both the amended SUA and the protocol are Algeria, Austria, Bulgaria, Dominican Republic, Estonia, Fiji, Latvia, Liechtenstein, Marshall Islands, Nauru, the Netherlands, Panama, St. Vincent and the Grenadines, Spain, Switzerland, and Vanuatu. All except Algeria, Dominican Republic, and Nauru are PSI partners, but only two (the Netherlands and Spain) are OEG members. International Maritime Organization, “Summary of Status of Conventions as at 31 August 2011,” available at <www.imo.org>.

⁸¹ See Ronald Welch, Assistant Attorney General, U.S. Department of Justice, Office of Legislative Affairs, letters to The Honorable John A. Boehner, Speaker of the House, and to The Honorable Joseph R. Biden, Jr., President, United States Senate, April 13, 2011.

⁸² Michael Kourteff, “Status of the Proliferation Security Initiative,” United States–Morocco International Transshipment Conference, Tangiers, Morocco, May 20–22, 2008, 3.

⁸³ See “Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation,” Beijing, September 10, 2010, available at <www.icao.int/DCAS2010/restr/docs/beijing_convention_multi.pdf>.

⁸⁴ Ibid.; ICAO, “Composite Table (Status of Treaties and Status of States vis-à-vis Treaties,” Fact Sheet, June 28, 2011, as reported at <www2.icao.int>. The following states have signed the convention: Brazil, Chad, China, Costa Rica, Cyprus, Dominican Republic, France, Gambia, Indonesia, Mali, Mexico, Nepal, Nigeria, Panama, Paraguay, Senegal, South Korea, Spain, Uganda, the United Kingdom, and the United States.

⁸⁵ Interview, Department of State officials, September 2011.

⁸⁶ United Nations Security Council Resolution 1874 (2009), S/RES/1874(2009), June 12, 2009.

⁸⁷ Interview, April 2010.

⁸⁸ Most other jurisdictions with flags of convenience are PSI adherents; the exceptions are Burma, Lebanon, Mauritius, and Tuvalu. U.S. officials do not expect any additional shipboarding agreements in the near future. Interview, Department of State officials, September 2011.

⁸⁹ Committee on Strengthening and Expanding the Department of Defense Cooperative Threat Reduction Program, Committee on International Security and Arms Control, Policy and Global Affairs, National Academy of Sciences, *Global Security Engagement: A New Model of Cooperative Threat Reduction* (Washington, DC: The National Academies Press, 2009), 79–83.

⁹⁰ Interviews, Melley, July 2011, and Schwartz, September 2011.

⁹¹ Interview, Cooper, December 2008.

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